

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORVILLE MEAUX,

No. C 05-3733 CW

Plaintiff,

v.

ORDER GRANTING
PLAINTIFF'S MOTION
TO AMEND COMPLAINT

NORTHWEST AIRLINES, INC.; ERIC
EDMUNDSON, individually and as an
employee of Northwest Airlines, Inc.;
PROFESSIONAL FLIGHT ATTENDANTS
ASSOCIATION; and DOES 1- 20,
Inclusive,

Defendants.

_____ /

Plaintiff Orville Meaux moves to amend his complaint.
Defendant Professional Flight Attendants Association (PFAA) opposes
the motion, arguing that Plaintiff's amendments would be futile.
Having considered all of the papers filed by the parties, the Court
grants Plaintiff's motion.

BACKGROUND

Plaintiff brings this motion to amend his complaint to assert

1 additional allegations, clarifying the basis for his claim against
2 Defendant PFAA for breach of the duty of fair representation. New
3 allegations include: Defendant PFAA failed and refused to conduct a
4 reasonable and competent investigation or any investigations
5 whatsoever as to the actual facts of Plaintiff's demotion and
6 discharge; Defendant PFAA failed and refused to put forward any
7 evidence supporting Plaintiff during the grievance process;
8 Defendant PFAA failed and refused to interview critical witnesses
9 who would have corroborated Plaintiff's version of key events.

10 In addition, the proposed amended complaint alleges claims
11 against Defendant Eric Edmundson for retaliation under California's
12 Fair Employment and Housing Act (FEHA) and for wrongful termination
13 in violation of public policy based on FEHA. As explained in the
14 Court's July 6, 2006 order granting Defendant Edmundson's motion to
15 dismiss, however, any claims against Defendant Edmundson in
16 Plaintiff's proposed amended complaint are dismissed with
17 prejudice.

18 LEGAL STANDARD

19 Federal Rule of Civil Procedure 15(a) provides that leave of
20 the court allowing a party to amend its pleading "shall be freely
21 given when justice so requires." Leave to amend lies within the
22 sound discretion of the trial court, which discretion "must be
23 guided by the underlying purpose of Rule 15 to facilitate decision
24 on the merits, rather than on the pleadings or technicalities."
25 United States v. Webb, 655 F.2d 977, 979 (9th Cir. 1981) (citations
26 omitted). Thus, Rule 15's policy of favoring amendments to
27 pleadings should be applied with "extreme liberality." Id.; DCD

1 Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987).

2 DISCUSSION

3 The Supreme Court has identified four factors relevant to
4 whether a motion for leave to amend should be denied: undue delay,
5 bad faith or dilatory motive, futility of amendment, and prejudice
6 to the opposing party. Foman v. Davis, 371 U.S. 178, 182 (1962).
7 The Ninth Circuit holds that these factors are not of equal weight;
8 specifically, delay alone is insufficient ground for denying leave
9 to amend. Webb, 655 F.2d at 980. But, as Defendant PFAA notes,
10 "Futility of amendment can, by itself, justify the denial of a
11 motion for leave to amend." Bonin v. Calderon, 59 F.3d 815, 845
12 (9th Cir. 1995); see also Newland v. Dalton, 81 F.3d 904, 907 (9th
13 Cir. 1996) ("district courts need not accommodate futile
14 amendments"). The Ninth Circuit instructs that "a proposed
15 amendment is futile only if no set of facts can be proved under the
16 amendment to the pleadings that would constitute a valid and
17 sufficient claim or defense." Miller v. Rykoff-Sexton, Inc., 845
18 F.2d 209, 214 (9th Cir. 1988); see also SAES Getters S.p.A. v.
19 Aeronex, Inc., 219 F. Supp. 2d 1081, 1086 (S.D. Cal. 2002) ("an
20 amendment is 'futile' only if it would clearly be subject to
21 dismissal").

22 Defendant PFAA contends that Plaintiff's proposed amendments
23 concerning his claim for breach of the duty of fair representation
24 are futile for four reasons.

25 First, Defendant PFAA argues that the Court lacks subject
26 matter jurisdiction over the amended claim for breach of the duty
27 of fair representation because Plaintiff failed to exhaust

1 mandatory contractual remedies and thus his claim is preempted
2 under the Railway Labor Act, 45 U.S.C. § 151. As Plaintiff notes,
3 however, the Supreme Court has held that a suit against a union for
4 breach of its duty of fair representation is "not subject to the
5 ordinary rule that administrative remedies should be exhausted
6 before resort to the courts." Czosek v. O'Mara, 397 U.S. 25, 27
7 (1970) (noting that the claim against a union for breach of its
8 duty of fair representation is "a discrete claim quite apart from
9 the right of individual employees expressly extended to them under
10 the Railway Labor Act to pursue their employer before the
11 Adjustment Board"). Indeed, the Supreme Court has stated that
12 "where the courts are called upon to fulfill their role as the
13 primary guardians of the duty of fair representation, complaints
14 should be construed to avoid dismissals and the plaintiff at the
15 very least should be given the opportunity to file supplemental
16 pleadings unless it appears beyond doubt that he cannot state a
17 good cause of action." Id. (inner quotations omitted). Defendant
18 PFAA's first reason for why Plaintiff's amendments would be futile
19 fails.

20 Second, Defendant PFAA argues that the amended breach of the
21 duty of fair representation claim is futile because it is time-
22 barred. But a claim can be dismissed as time-barred only where it
23 is evident on the face of the complaint that the claim is
24 necessarily barred. See, e.g., Mertens v. Hewitt Associates, 948
25 F.2d 607, 613 (9th Cir. 1991), aff'd, 508 U.S. 248 (1993)
26 (dismissing "on statute of limitations grounds is improper where
27 the complaint merely shows that the action may have been barred")
28

(inner quotation omitted). Here, it is not clear on the face of the complaint that Plaintiff's claim for breach of the duty of fair representation is time-barred. Defendant PFAA's exhibits, which support its argument that Plaintiff's claim is time-barred, were not considered by the Court; such exhibits are properly considered when included with summary judgment pleadings, not when included with an opposition to a motion to amend a complaint. Defendant PFAA's second argument that Plaintiff's amendments would be futile also fails.

Third, Defendant PFAA argues that the amended claim is futile because the amended complaint omits any cause of action claiming that Defendant Northwest Airlines, Inc. breached the collective bargaining agreement. According to Defendant PFAA, to bring a claim against it for breach of the duty of fair representation, Plaintiff must also bring a breach of contract claim against his former employer, Defendant Northwest. Defendant PFAA is incorrect. Defendant PFAA cites Del Costello v. International Broth. of Teamsters, 462 U.S. 151 (1983). Although the Supreme Court in Del Costello recognized that a plaintiff's claim against a union and his former employer are "inextricably interdependent," the Court also recognized that an "employee may, if he chooses, sue one defendant and not the other." 462 U.S. at 164-65. Defendant PFAA's third argument fails.

Fourth, Defendant PFAA argues that the amended claim for breach of the duty of fair representation is futile because it fails to plead facts sufficient to state a claim. Like Defendant PFAA's other arguments, this argument fails. The Ninth Circuit

1 holds that a "union breaches its duty of fair representation if it
2 processes a member's grievance in an arbitrary or perfunctory
3 manner. To comply with its duty, a union must conduct some minimal
4 investigation of grievances brought to its attention." Tenorio v.
5 NLRB, 680 F.2d 598, 601 (9th Cir. 1982). Plaintiff alleges facts
6 in his amended complaint that, if proved, would constitute a valid
7 and sufficient claim. For example, he alleges that Defendant PFAA
8 failed and refused to investigate the facts relating to his
9 demotion and discharge, failed and refused to obtain his entire
10 personnel file, failed and refused to interview key witnesses that
11 would have corroborated his version of events, and processed his
12 grievance in a perfunctory fashion.

13 Plaintiff's amended claim for breach of the duty of fair
14 representation is not clearly subject to dismissal; it is not
15 futile. Nor is it brought in bad faith with undue delay.
16 Defendant PFAA does not argue prejudice. DCD Programs, 833 F.2d at
17 186 (party opposing the motion bears the burden of showing
18 prejudice). Therefore, the Court grants Plaintiff's motion for
19 leave to amend his complaint.

20 CONCLUSION

21 For the foregoing reasons, the Court GRANTS Plaintiff's Motion
22 To Amend Complaint (Docket No. 48). Plaintiff must file his
23 proposed amended complaint within ten days of this order.

24 IT IS SO ORDERED.

25 Dated: 7/17/06



26 CLAUDIA WILKEN
27 United States District Judge
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United States District Court
For the Northern District of California

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